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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 291

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The order and opinion of the district court dismissing the information (R. 8–11) is not reported.

JURISDICTION

The order of the district court dismissing the information on the ground that it does not state an offense under 33 U.S.C. 407 was entered on March 26, 1965 (R. 8–11). Notice of appeal to this Court was filed in the district court on April 26, 1965 (R. 12–13), and probable jurisdiction was noted on October 11, 1965

(R. 14). The jurisdiction of this Court rests upon 18 U.S.C. 3731.

STATUTES INVOLVED[1]

Section 13 of the Rivers and Harbors Act of March 3, 1899, 30 Stat. 1121, 1152, 33 U.S.C. 407, provides in pertinent part:

> SEC. 13. That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided* * * *

Section 16 of the Rivers and Harbors Act of March 3, 1899, 30 Stat. 1121, 1153, 33 U.S.C. 411, 412, provides in pertinent part:

> SEC. 16. That every person and every corporation that shall violate, or that shall know-

[1] Other statutes cited in our argument are reproduced in Appendix A, pp. 23–25, *infra*.

ingly aid, abet, authorize, or instigate a violation of the provisions of sections thirteen, fourteen, and fifteen of this Act shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding twenty-five hundred dollars nor less than five hundred dollars, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction.

QUESTION PRESENTED

Whether respondent's discharge of valuable gasoline into navigable waters through a valve unintentionally left open violated 33 U.S.C. 407.

STATEMENT

An information under 33 U.S.C. 407, filed in the United States District Court for the Middle District of Florida, alleged that respondent suffered to be discharged into the St. Johns River from its oil discharge terminal at Jacksonville, Florida, "refuse matter" consisting of 100 octane aviation gasoline (R. 3). Respondent moved to dismiss on the ground that the information failed to charge an offense (R. 4). A stipulation of fact was entered into solely for the purpose of the motion to dismiss. It stated that employees of Standard Oil Company repaired and cleaned an 8-inch line connecting one of its bulk storage tanks with its dock facilities; that the line was refilled with 100 octane aviation gasoline then stored

in the bulk storage tank; and that, because the main shut-off valve at the dock-side end of the line had been unintentionally left open by the employees, approximately 300 gallons of the gasoline spilled out onto the dock and into the St. Johns River (R. 5–7). The district court dismissed the information on the ground that the accidental discharge of valuable and usable gasoline does not constitute discharge of "refuse matter" within the meaning of the statute (R. 8–11).

SUMMARY OF ARGUMENT

The statute which appellee was charged with violating derives from an 1899 codification and consolidation of statutes which were designed to prohibit willful or negligent discharge into navigable waters of matter which would obstruct navigation or pollute the water. It is clear from the legislative debate that Congress intended no substantive change in the law at that time. Since the prohibitions of the predecessor anti-pollution statute first identified various kinds of deposits which might be valuable to their owner and then dealt comprehensively with the discharge of "any other matter of any kind," it is clear that Congress did not intend to distinguish, under that statute, between valuable and useless matter. The insertion of the word "refuse" in the 1899 codification should not, therefore, be read as effecting the distinction relied upon by the district court. Nor does anything in the history of the Oil Pollution Act warrant a contrary construction.

The word "refuse" in the statute does not have the meaning given to it by the district court since that

would be inconsistent with the legislative purpose. Valuable matter can obstruct navigation or pollute water no less than useless material. And the district court's construction would produce anomalous differences in result under various clauses in the same statute. "Refuse" refers, in our view, not to the value which the material has to its owner but to its relation vis-à-vis the navigable waters into which it is discharged. If it is foreign matter—*i.e.*, likely to pollute the water or endanger navigation—it constitutes "refuse." Alternatively, "refuse" may refer to the value of the material after it has been discharged; if it is worth salvaging it may not qualify as "refuse." Under either of these constructions the gasoline in this case was "refuse," and the charge in the information, if based on proof of negligence, was covered by the statute.

ARGUMENT

The statute which appellee was charged with having violated (33 U.S.C. 407) prohibits the discharge of "any refuse matter of any kind or description whatever" into navigable waters. The only issue in this case is whether something which has not been discarded or rejected by its owner can constitute "refuse matter." Relying on the meaning attributed to the word "refuse" in *United States* v. *The Delvalle*, 45 F. Supp. 746 (E.D. La.), the district court held here that the word "refuse" limits the reach of the statute to matter which has been cast aside as useless by its owner. It dismissed the information because of the stipulation that prior to its discharge into the river appellee's gasoline was "sound, valuable and usable

material" (R. 6). In our view this construction of the words "refuse matter" conflicts with the history of 33 U.S.C. 407. The statute can and should be read, consistently with the objectives of the Congress which enacted it, as prohibiting the discharge of any material, irrespective of value, which would pollute the water or obstruct navigation.

I

CONGRESS INTENDED TO PROHIBIT THE DISCHARGE OF ALL FOREIGN MATTER INTO NAVIGABLE WATERS

The early criminal statutes dealing with discharges into navigable waters manifested Congress' concern with two interrelated problems: obstruction to navigation and pollution. An Act of August 5, 1886, "making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors" (24 Stat. 310), also made it unlawful "to cast, throw, empty, or unlade * * * any ballast, stone, slate, gravel, earth, slack, rubbish, wreck, filth, slabs, edging, sawdust, slag, or cinders, or other refuse or mill-waste of any kind, into New York Harbor" (*id.* at 329). Without repealing the 1886 statute, Congress in 1888 enacted a law "to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City" (25 Stat. 209). It provided:

> That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal

> waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor * * *.

A comparison of the 1886 and 1888 Acts discloses that the latter not only enumerated different kinds of deposits but that it prohibited discharge of "any other matter of any kind" whereas the former dealt only with "other refuse or mill-waste of any kind." The reference in the Act's caption to "injurious" deposits as well as "obstructive" ones demonstrates that Congress was concerned not only with physical impediments to navigation, but with matter that might pollute the water. And the inclusion in the list of forbidden deposits of mud, sand and acid—which may pollute but do not obstruct—reinforces the inference that the 1888 statute was an anti-pollution measure.

The protections afforded initially to New York harbor were extended in 1890 and 1894 to other navigable waters. A specific anti-obstruction provision, included as Section 6 of the Rivers and Harbors Appropriation Act of 1890, provided (26 Stat. 453):

> That it shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, furnace, manufacturing establishments, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse or

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other waste of any kind, into any port, road, roadstead, harbor, haven, navigable river, or navigable waters of the United States *which shall tend to impede or obstruct navigation,* or to deposit or place or cause, suffer, or procure to be deposited or placed, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, or other waste in any place or situation on the bank of any navigable waters, where the same shall be liable to be washed into such navigable waters, either by ordinary or high tides, or by storm or floods, or otherwise, whereby navigation shall or may be impeded or obstructed. [Emphasis added.]

The language of the 1888 New York harbor statute—which, we submit, was directed principally at pollution—was substantially repeated in an 1894 statute prohibiting deposits of the enumerated sort in the "waters of any harbor or river of the United States, for the improvement of which money has been appropriated by Congress" (28 Stat. 363). The enumeration of forbidden acts was the same in this statute as in the 1888 act, and it concluded with the words "or any other matter of any kind."

By 1896, therefore, Congress had legislated separately with respect to the dangers of pollution and obstruction in navigable waters other than New York harbor. In that year Congress directed the Secretary of War to make a compilation of existing general laws protecting navigable waters and to submit recommendations as to "revision, emendation, or enlargement of the said laws as, in his judgment, will be advantageous to the public interest." 29 Stat. 234. The Secretary submitted the full text of existing laws and

a proposed act "Revising and Enlarging Laws for the Protection of Navigable Waters." H. Doc. No. 293, 54th Cong., 2d Sess. The compilation noted the 1894 pollution statute and the 1890 obstruction statute under the heading of "Depositing material in navigable waters." *Id.* at 4–5. The "Proposed Act" codified these two provisions as follows (*id.* at 9–10):

> That it shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water; and it shall not be lawful to deposit, or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water, or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed * * *.

In 1899, Senator Frye of the Senate Commerce Committee presented the bill on the floor of the Senate as an amendment to the river and harbor appropriation act then under consideration. He assured the Senate that the Committee on Commerce had examined it very carefully and (32 Cong. Rec. 2296–2298)

> found it to be entirely correct and in accord with the statutes now in existence, only scattered, as I said before, from the beginning of the statutes down through to the end, with some brief amendments, in order to make the meaning of the statutes more clear. So I ask that this amendment may be inserted. I do not think there is any necessity of reading it. It is only these sections of the Revised Statutes codified.

With continued assurances that no material change had been made in the law, the Senate passed the amendment. The House also passed the amendment after it was informed that " the bill as now agreed upon and presented also includes a codification of existing laws pertaining to rivers and harbors, though containing no essential changes in the existing law." *Id.* at 2923. This codification of the prior anti-pollution and anti-obstruction policies of Congress thereby became Section 13 of the River and Harbor Act of 1899—the present 33 U.S.C. 407 (30 Stat. 1152).[2]

This history, we submit, demonstrates convincingly that it was Congress' intention in 1899 to encompass within the words "refuse matter of any kind or description whatever" the designations of forbidden deposits included in *both* the 1890 and 1894 acts—*i.e.*,

[2] The New York harbor statutes remained in effect and, having been extended to the harbors of Hampton Roads and Baltimore (72 Stat. 970), are now found at 33 U.S.C. 441–451. The New York statute has been held to apply not only to waste oil which was unintentionally discharged (*The Albania*, 30 F. 2d 727 (S.D. N.Y.)), but to valuable oil which leaked from an oil steamer's intake valve which had negligently been left open (*The Colombo*, 42 F. 2d 211 (C.A. 2)).

"ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse, or other waste of any kind" *and* "refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, *or any other matter of any kind*". [Emphasis added.] The full colloquy on the floor of the Senate (which we reprint as Appendix B, pp. 27–32, *infra*) rebuts any suggestion that Congress intended to effectuate a change in the existing law, much less that it wished to narrow the reach of the statute. A limitation of the statute to "valueless" or "useless" matter—such as that relied on by the district court—is inconsistent with the obvious Congressional purpose. The discharge of valuable acid, for example, was expressly covered by the act of 1894; it would not be covered under the district court's interpretation of the successor statute. In holding that oil was included in the words "any other matter of any kind," the Court of Appeals for the Second Circuit observed in *The Colombo,* 42 F. 2d 211, 212, that "[i]n 1888, when [the New York harbor statute] was passed, oil-burning steamers were not known, and it was almost certainly for this reason that oil was not specifically included, for in recent years this has become a great nuisance and a serious danger to the harbor." The same is true of the gasoline deposit involved here. Although gasoline was not specifically named in the 1894 statute, a fair reading *ejusdem generis* of "any other matter of any kind" would obviously include it.

Failure to examine the legislative history of the

1899 codification resulted in a misreading of the statute approximately 20 years after its enactment. A United States District Court of the Eastern District of Virginia held in 1922 that Section 13 dealt only with material which obstructs navigation and not with polluting non-obstructing deposits.[3] On the basis of this misconstruction, the Chief of Engineers advised the Chairman of the Senate Committee on Commerce that the statute "is not applicable to prevent the discharge of oil upon navigable waters" and requested legislation to prohibit oil pollution. S. Rep. No. 901, 67th Cong., 2d Sess. (1922). The Secretary of War, in an earlier letter to the House Committee on Rivers and Harbors, had observed that although his department had assumed that Section 13 covered the discharge of oil, "the question has not been definitely determined judicially."[4] Apparently fearing the precise misreading which the Virginia district

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[3] This construction was based on the words which immediately precede the statute's first proviso—"whereby navigation shall or may be impeded or obstructed." It is clear, we submit, that these words in context refer not to the section's first clause, which prohibits the deposit of any refuse matter directly into navigable waters, but to the prohibition upon depositing material "on the bank of any navigable water." In other words, the statute makes it criminal to place obstructing *or* polluting "refuse matter" directly into a river.

[4] The Secretary did say, however, that the oil menace in New York harbor was being managed under the New York harbor act of 1888. H. Rep. No. 1569, 67th Cong., 4th Sess., p. 2 (1923). As we have shown, Congress intended to impose the same restrictions as applied to New York harbor on deposits in all navigable waters for which it had appropriated funds. See pp. 6–10, *supra*.

court later gave Section 13, the Secretary had previously requested an amendment to that provision which would have expressly covered oil pollution.[5] H. Rep. No. 1569, 67th Cong., 4th Sess., pp. 2–3 (1923).

The Oil Pollution Act of 1924 (33 U.S.C. 431–437) was passed at the next session of Congress. It prohibited the discharge of oil by vessels into coastal waters, but did not cover deposits into inland navigable waters or the discharge of oil from shore stations. The Act was explicitly made applicable "in addition to" previously existing laws and was "not [to] be construed as repealing, modifying, or in any manner affecting the provisions of those laws," 33 U.S.C. 437. It is apparent from both the House and Senate reports that a significant factor in the Act's passage was the erroneous construction given to Section 13 by the Virginia district court. Both 1924 reports included no correspondence other than the letter from the Chief of Engineers (p. 12, *supra*) and an accompanying letter from the United States Attorney for the Eastern District of Virginia reporting on that decision. See H. Rep. No. 794, 68th Cong., 1st Sess. (1924); S. Rep. No. 66, 68th Cong., 1st Sess. (1924).

The fact that Congress, in order to resolve all doubts, passed the Oil Pollution Act under the above

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[5] The proposed amendment, which was reported on by the House Committee would also have moved the words "where navigation shall or may be impeded or obstructed" to the beginning of the clause relating to deposits on banks of navigable rivers, thereby foreclosing any construction which would make it applicable to other clauses. See note 3, *supra*.

circumstances, does not mean that Section 13 i
inapplicable to deposits of oil or other similar prod
ucts. In 1936 the Court of Appeals for the Nint
Circuit rejected the contention that the represents
tions made to Congress with respect to Section 1
by the Chief of Engineers in 1922 narrowed the appli
cation of that statute. In *La Merced*, 84 F. 2d 44
(C.A. 9), which involved a charge under Section 1
that oil had been discharged into Lake Union in th
State of Washington, the court observed that the com
mittee report on the Oil Pollution Act "neither say
nor implies what the intention of Congress was wit
respect to a statute enacted some 35 years prior t
that time" (84 F. 2d at 446)—*i.e.*, the New York har
bor act of 1888 upon which the later acts were mod
eled. The intent of Congress in 1899 was, as we hav
shown, to prohibit deposits of any polluting matter o
any kind, and the statute should be applied consist
ently with that intent.[4]

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[4] Prior to the *La Merced* decision, *supra*, the Army has sough
clarifying legislation clearly to prohibit oil pollution of inlan
navigable waters and of coastal waters from shore stations. Se
H. Doc. No. 417, 69th Cong., 1st Sess., pp. 19-20, 27; S. Rep. No
2225, 74th Cong., 2d Sess. In 1962, the Secretary of the Army
wrote to the Chairman of the House Committee on Public Work
(certified letter filed with this Court):

> The River and Harbor Act of March 3, 1899 (33 U.S.C
> 407), prohibits the discharge of "any refuse matter of any
> kind or description whatever" into any navigable water o
> the United States. Insofar as the interests of this Depart
> ment in preventing impediments to navigation are con
> cerned, this existing law has been interpreted by this De
> partment as providing adequate means of controlling the

II

THE STATUTE DRAWS NO DISTINCTION BETWEEN THE DISCHARGE OF VALUABLE AND USELESS MATTER

The history of Section 13 (pp. 6–10, *supra*) demonstrates that the provision was intended to cover deposits which could be "injurious" as well as those which are "obstructive." The broad remedial purpose served by the statute is also reflected in Congress' decision to subject to a criminal sanction negligent as well as willful acts; the statute applies to any one who "cause[s], suffer[s], or procure[s]" the specified discharge or deposit, without regard to his intention.[1] And this Court approved a liberal construction of the statute in *United States* v. *Republic Steel Corp.*, 362 U.S. 482, 489–491:

> * * * § 13 [33 U.S.C. 407] bans the discharge in any navigable water of "any refuse matter of any kind or description whatever other than that flowing from streets and sewers and pass-

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discharge of harmful materials, including oil, into navigable waters of the United States. However, it is considered desirable specifically to prohibit the dumping of oil wastes into all the navigable waters of the United States, as now provided in the Oil Pollution Act with respect to coastal waters. This would remove any doubt as to Federal jurisdiction over discharge of oil into all the navigable waters of the United States.

[1] The stipulation in this case—which was entered into solely for the purpose of the motion to dismiss—states that the line was "accidentally" left open by appellee's employees (R. 5). The circumstances of this "accident" strongly point to negligence, and we do not read the stipulation as indicating otherwise. Hence the facts of this case do not involve an unavoidable accident, as by an Act of God, which may not be encompassed even by the term "suffer."

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> ing therefrom in a liquid state." * * * We read the 1899 Act charitably in the light of the purpose to be served. The philosophy of the statement of Mr. Justice Holmes in *New Jersey* v. *New York,* 283 U.S. 336, 342, that "A river is more than an amenity, it is a treasure," forbids a narrow cramped reading either of § 13 [33 U.S.C. 407] or of § 10 [33 U.S.C. 403].

By reading the word "refuse" as limiting the statute's application to valueless matter, the district court unjustifiably narrowed the reach of Section 13. Material which is valuable to its owner and which is negligently deposited in a river is no less a hazard to navigation than useless matter; it presents the same danger of pollution as matter which is knowingly discarded. Congress patently drew no such distinction when it passed Section 13's predecessor statute in 1894 and prohibited the discharge of "any other matter of any kind" (p. 8, *supra*), and, we submit, it intended no such distinction when it inserted the word "refuse" into the 1899 codification.

It is true, of course, that an owner is likely to take more precautions to prevent negligent discharges of valuable matter than of material which is useless to him. Hence a legislature could reasonably conclude that it need provide criminal sanctions only against the discharge of waste products, leaving the control of valuable materials to an owner's self-interest. But there is no indication whatever in the statute or in its legislative history that Congress made any such judgment. In fact, the anomalous results which flow from the district court's reading of the statute demonstrate that Congress had no such intention. The second

clause of Section 13 makes it unlawful to "cause, suffer, or procure to be deposited *material of any kind*" [emphasis added] on the bank of any navigable river where such material might be washed into the water and impede or obstruct navigation. That clause, not being limited to "refuse" matter, would patently apply—even by the district court's reasoning—to a valuable article as well as to a useless one. Under the district court's limiting construction of "refuse matter," it would appear that Congress had in Section 13 made criminal the negligent deposit of obstructive valuable material on a river bank but had not similarly prohibited its negligent discharge directly into the river. Whatever self-interest might be thought sufficient to regulate the latter conduct exists with respect to the former, and the damage is obviously more certain when the objectionable matter is discharged directly into the river. Congress could hardly be assumed to have intended to distinguish for purposes of criminal punishment between valuable and valueless matter deposited directly into navigable waters but, at the same time, not to have made that distinction with respect to matter placed on the banks of navigable waters.

Moreover, while there is surely a difference between the caution with which an owner guards his valuable property and the care which he is likely to take with waste, the value of property is not invariably an adequate safeguard against its negligent discharge into navigable waters. If the value of the commodity is marginal and the necessary safeguards expensive, inadequate precautionary measures may be taken to

prevent unintentional discharge even of matter which has not been rejected or discarded. The most effective remedial measure in this area is a statute prohibiting the negligent discharge or deposit into navigable waters of any foreign matter—and the history of Section 13 establishes that Congress sought to enact the broadest remedy possible.

This construction does not, by any means, read the word "refuse" out of Section 13. That word can mean either of two things: (1) It could be read to mean that Section 13 covers only the discharge of *foreign* matter into navigable waters. If pure water is thrown into a river, for example, it would not constitute "refuse matter," and, indeed, it should not be deemed within the statute even if the water is useless to its owner and has been rejected or thrown away. This construction of the word "refuse" is most consistent with the purpose of Section 13 since it makes the effect of the material on the navigable waters the touchstone of legality; only such matter as might pollute the water or obstruct navigation is considered "refuse." (2) Alternatively, "refuse" may be taken to mean, as Judge Learned Hand suggested in *United States* v. *Ballard Oil Co.*, 195 F. 2d 369 (C.A. 2), anything which becomes useless and unsalvageable once it is discharged into the water.[8] This would exempt

[8] The *Ballard Oil* case involved oil which was being pumped from the defendant's barge into a tank on shore, and it was negligently permitted to overflow into the river. Ruling that the stipulated facts "irrefragably proved an offence" under Section 13, the court stated (195 F. 2d at 371):

> The spilled oil was certainly "refuse matter"; it had escaped from the tank whither it could not be reclaimed,

from the statute's reach any matter which can be salvaged and is worth salvaging,[8] presumably on the ground that the owner's self-interest would insure that it did not remain a permanent menace to navigation or to the purity of the water. The gasoline in the present case "was dissipated into the river" (R. 6), so that it became "refuse" within this proposed construction. See also *United States* v. *Standard Oil Co. of California*, 1962 American Maritime Cases 2531 (D. Hawaii).

The fact that Section 13 renders negligent conduct criminally punishable is not a reason for reading it narrowly in a manner which would defeat its legislative purpose. As this Court observed in *United States* v. *Dotterweich*, 320 U.S. 277, 285, "[i]n such matters the good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries must be trusted." We are informed by the

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and for all useful industrial purposes it had ceased to exist. The word, "refuse," does not demand that the material must have been deliberately thrown away; it is satisfied by anything which has become waste, however useful it may earlier have been.

[8] The rule should not apply where the cost of salvage is equal to or greater than the value of the material. In such cases, the tendency is for the owner to abandon the property and leave salvage to the government. This fact is dramatically demonstrated by *United States* v. *2,220,000 pounds of Chlorine Cargo*, No. 22,148, presently pending in the Court of Appeals for the Fifth Circuit, in which a barge carrying $85,000 worth of chlorine was negligently sunk in the Mississippi River. Abandonment by the owners resulted in government salvage operations costing $1,565,000 engineering expense and $1,516,000 public health and safety expense.

Office of the Chief of Engineers that Section 13 is the basis of prosecution in approximately one-third of the oil pollution cases reported to the Department of Justice, and that it is necessary in the program for control of oil pollution. It is, of course, true that the incidents vary in seriousness and that not all negligent discharges of petroleum products warrant prosecution. Whether an incident is serious enough to justify deterrence of its repetition by criminal sanctions may depend on factors such as the hazard created by the discharge,[10] the culpability of the defendant, or the volume of the discharge.[11] Each of these is a circumstance which may call "for conscience and circumspection in prosecuting officers" (*Nash* v. *United States,* 229 U.S. 373, 378), but it does not justify a construction of the statute which would render it inapplicable to many of the evils which it was designed to prevent.

We submit that the origin of Section 13, its administrative interpretation and the weight of judicial decisions support the view that the statute makes no distinction between valuable and useless matter. The contrary opinion of the district court in this case and

[10] Appellee recognized the dangers involved here and called the Jacksonville Fire Department and the Coast Guard, which took measures to dissipate the gasoline (R. 5–6).

[11] In *Ballard Oil*, the court noted that the oil spread on the surface of the water for a mile upstream and three miles downstream. It flowed into a boat basin where it was about one inch thick on top of the water, and where it covered all the boats with a black tarry-looking mass. 195 F. 2d at 370.

in *United States* v. *The Delvalle,* 45 F. Supp. 746 (E.D. La.), on which the district court here relied, are in error.

CONCLUSION

For the foregoing reasons, we respectfully submit that this Court should reverse the judgment below and reinstate the information.

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NOVEMBER 1965.

APPENDIX A

Section 3 of the Rivers and Harbors Act of August 5, 1886, 24 Stat. 329, provided in part:

> SEC. 3. It shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, slack, rubbish, wreck, filth, slabs, edgings, sawdust, slag, or cinders, or other refuse or mill-waste of any kind, into New York Harbor: * * *

Section 1 of the New York Harbor Act of June 29, 1888, 25 Stat. 209, provides in part:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor * * *.

Section 6 of the Rivers and Harbors Act of September 19, 1890, 26 Stat. 453, provides in part:

> SEC. 6. That it shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or

> procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, furnace, manufacturing establishments, or mills of any kind whatever, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse, or other waste of any kind, into any port, road, roadstead, harbor, haven, navigable river, or navigable waters of the United States which shall tend to impede or obstruct navigation, or to deposit or place or cause, suffer, or procure to be deposited or placed, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, or other waste in any place or situation on the bank of any navigable waters where the same shall be liable to be washed into such navigable waters, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed * * *.

Section 6 of the Rivers and Harbors Act of August 18, 1894, 28 Stat. 363, provides in part:

> SEC. 6. That it shall not be lawful to place, discharge, or deposit, by any process or in any manner, ballast, refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the waters of any harbor or river of the United States, for the improvement of which money has been appropriated by Congress * * *.

Section 3 of the Oil Pollution Act of June 7, 1924, 43 Stat. 605, 33 U.S.C. 433, provides:

> That, except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, and except as otherwise permitted by regulations prescribed by the Secretary as hereinafter authorized, it shall be

unlawful for any person to discharge, or suffer, or permit the discharge of oil by any method, means, or manner into or upon the coastal navigable waters of the United States from any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements and such as may be required under the laws of the United States and the rules and regulations prescribed thereunder. The Secretary is authorized and empowered to prescribe regulations permitting the discharge of oil from vessels in such quantities, under such conditions, and at such times and places as in his opinion will not be deleterious to health or sea food, or a menace to navigation, or dangerous to persons or property engaged in commerce on such waters, and for the loading, handling, and unloading of oil.

APPENDIX B

32 Cong. Rec. 2296–2297 (February 24, 1899)

Mr. FRYE. By an act of Congress approved June 3, 1896, the War Department was instructed to codify the laws touching rivers and harbors. We have passed laws in each river and harbor act, and they are scattered from the beginning of the Revised Statutes through to the end, and some of them are a little bit crude. The War Department have attended to that work and reported to the House. Now, they have placed in our hands all but two sections of the law, and they are contained in this bill, with some very few amendments to make the laws more certain. There has been some contention about the laws hitherto, the Attorneys-General disagreeing.

This amendment of three pages which I now offer is the result of their work. As it is all contained in the Revised Statutes, I do not see any necessity of reading this long amendment. It was referred to a subcommittee of the Committee on Commerce, and they examined it very carefully and found it to be entirely correct and in accord with the statutes now in existence, only scattered, as I said before, from the beginning of the statutes down through to the end, with some brief amendments, in order to make the meaning of the statutes more clear. So I ask that this amend-

ment may be inserted. I do not think there is any necessity of reading it. It is only these sections of the Revised Statutes codified.

Mr. TELLER. I do not want to detain the Senate unnecessarily, but we have taken a good many things on faith in this bill, it seems to me. Here we have a provision to build a canal which I do not believe is acceptable to any man. I do not believe anybody is satisfied with it, and yet when we suggest amendments we are told, "Oh, well, that will be fixed somewhere else." I insist upon the reading of the amendment.

Mr. PETTIGREW. Is the amendment printed?

Mr. FRYE. It is printed. It came in a Senate or House document. It was prepared by the War Department.

Mr. PETTIGREW. Do the amendments come from the Committee on Commerce?

Mr. FRYE. They came from the War Department to the Committee on Commerce and were reported by the Committee on Commerce.

Mr. PETTIGREW. The committee have duly considered them?

Mr. FRYE. Oh, yes, and examined them through a subcommittee with great care.

Mr. CHANDLER. I wish to ask the Senator whether there is any change made in the existing law by the amendments?

Mr. FRYE. Very slight changes to remove ambiguities. I have here a letter from Colonel Mackenzie, who understands the laws about rivers and harbors and understands rivers and harbors better than any

man living, and I propose to have that placed in the Record.

Mr. PETTIGREW. Is it in regard to these amendments?

Mr. FRYE. It is.

Mr. PETTIGREW. Let it be read.

The VICE-PRESIDENT. The Secretary will read as requested.

The Secretary read as follows:

> In addition to the matter above referred to I beg to invite your attention to the following:
>
> In accordance with the direction of Congress in section 2 of the river and harbor act of June 3, 1896, the compilation of all general laws that had been enacted from time to time by Congress for the maintenance, preservation, and protection of navigable waters of the United States was prepared and submitted to Congress, together with a draft of an act embodying such provisions and enlargements of the aforesaid laws as the experience of this office had shown to be advantageous to the public interests. The draft submitted covered every subject embraced in the existing laws with two exceptions, and was printed in House Document No. 293, Fifty-fourth Congress, second session, a copy of which is inclosed.
>
> This proposed act I believe to be clear from ambiguity, and better adapted to serve the interests of commerce and navigation than the laws in their present form. The proposed act has 13 sections, the last 3 of which (sections 11 to 13) were incorporated by the House Committee on Rivers and Harbors in the pending bill. (See sections 6 and 7 of H.R. 11795).
>
> In my opinion it would be to the public interest to incorporate in the bill the remaining 10 sections of the proposed act, and I can con-

ceive of no objection thereto, as these sections contain no new matter, but simply revise and make clearer and more definite laws that have been already enacted.

Sections 1 and 2 of the proposed act are intended to replace section 7 of the act of September 19, 1890, as amended by section 3 of the act of July 13, 1892, and I beg to invite your attention to the accompanying brief, giving special reasons why this particular law should be revised and amended.

Very respectfully,

A. MACKENZIE,
Lieutenant-Colonel, Corps of Engineers.

Mr. PETTIGREW. I do not like to object, but I think this is a dangerous precedent. It seems to me we are enacting an entire revision of these laws.

Mr. FRYE. Oh, no. There are not ten words changed in the entire thirteen sections. It is a compilation. The Senator understands that these laws have been passed in this way: A section in a river and harbor act fifty years ago, another one forty years ago, another one twenty years ago, another one later, and so on down. We put a provision in the last river and harbor act to codify those laws. The Department have codified them, and in their careful examination during the codification they found two or three of them, relating principally to impediments placed in harbors and things of that kind, which required to be changed, as to just a word or two, because the Attorneys-General had rendered different decisions in regard to the effect of the law.

It seems to me there is no necessity of reading them. I will state further, as I said before, that I

examined them myself. I then had them referred to a subcommittee of the Committee on Commerce to go over them carefully, and the subcommittee reported that they were all right.

Mr. NELSON. I wish to say to the Senator from South Dakota that I carefully examined these amendments, and if the Senator will look at the sheets he will see that they are all printed portions of the statutes, nearly every word. There is no material change in the law. It simply puts them all into one body instead of having them scattered. I took special pains especially to see whether they interfered with existing structures and bridges and navigation, and they do not.

Mr. PETTIGREW. Of course, none of those statements satisfies my objection. It appears that we have a codification of these laws, and it is proposed to bring them in here——

Mr. FRYE. If there is any objection, let the amendment be read. I ask those who favor this bill to stay here tonight and pass it. That is all.

Mr. PETTIGREW. I have not said that I would raise an objection, neither have I yielded the floor to the Senator from Maine.

Mr. FRYE. I beg the Senator's pardon. I ought to have addressed the Chair in proper form, but I am getting a bit tired.

Mr. PETTIGREW. The Senator has committed the same offense again. I did not yield the floor, and neither did the Senator from Maine address the Chair.

The PRESIDING OFFICER (Mr. GALLINGER in the chair). The Senator from South Dakota is entitled to the floor.

Mr. PETTIGREW. I do not know how important this legislation is. I have great confidence in the Senator from Maine and the Senator from Minnesota, but it seems to me a bad precedent that we should codify the laws upon this subject, bring it in here at the last minute, at the end of the day, and without reading it, without having it printed and laid upon our desks, without any chance to consider or think about it, practically knowing nothing about it, put it through as an amendment to an appropriation bill. But there are so many awful things in this bill now that I do not think you can possibly make it much worse, and I will not object, for the reason that I believe this will be another reason why the other House will never let the bill see daylight after they get hold of it.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Maine [Mr. FRYE].

The amendment was agreed to, as follows: * * *

* * * * *

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